

RECORDED AND VERIFIED  
 LOIS J. MOORING  
 REGISTER OF DEEDS  
**INDEXED**



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 WAYNE COUNTY, NC  
 LOIS J MOORING REGISTER OF DEEDS  
 BK **2625** PG **99-106**

NORTH CAROLINA  
 WAYNE COUNTY

DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS FOR  
 SOUTHEAST COMMERCIAL PARK

THIS DECLARATION, made and entered into this the 8th day of May, 2008, by Ivey Commercial Properties, Inc., a North Carolina corporation, hereinafter referred to as "Declarant":

WITNESSETH:

THAT WHEREAS, Declarant is the owner of that certain tract or parcel of land more particularly described as Southeast Commercial Park (hereafter "Southeast Commercial Park") as the same is shown on a plat recorded in Plat Cabinet N, Slide 5-I in the Office of the Register of Deeds of Wayne County; and

WHEREAS, it is for the mutual benefit of all lot owners, present and future, in said Southeast Commercial Park for Declarant to subject said lots to the following protective and restrictive covenants;

NOW, THEREFORE, Declarant does hereby declare for itself and its successors and assigns that all of the properties referred to above that form the Southeast Commercial Park shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties (the "Benefited Parties"), or any part thereof, their heirs, successors and assigns, for the term of these covenants as set forth below, and shall inure to the benefit of each holder thereof.

ARTICLE ONE

LAND USE. No lot shall be used except for commercial purposes, which shall mean the following: automobile service stations, car washes and self-service gas

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stations; parking lots; boat sales and services; cabinet, woodworking and upholstery shops; restaurants; insurance agencies; pharmacies or drug stores; corporate offices; professional offices; banking facilities; department stores; dry cleaners and laundries; florist and gift shops; furniture sales; jewelry sales and watch repair; ABC stores; book, tape or video stores; furniture sales; wholesale outlets; or retail sales of any kind whatsoever.

A McDonald's restaurant shall be allowed on Lot One (1).

The uses for which the lots are allowed must also conform to the then existing City of Goldsboro or, if applicable, Wayne County zoning ordinances, as well as these Protective and Restrictive Covenants.

The following uses are, however, prohibited within the development:

(1) No lot shall be used for agricultural, residential or manufacturing purposes. No automobile sales (whether new or used), or adult (pornographic) book or adult (pornographic) video stores will be allowed. Restaurants serving mixed beverages and other beverages containing alcohol shall be allowed but no topless bars will be allowed.

(2) The following competing restaurants operating under the listed trade names or operating under any successor trade names shall not be allowed in Southeast Commercial Park: Hardee's, Sonic Drive In, Checkers, Wendy's, Cookout, Jack-in-the-Box, Burger King, Backyard Burgers, and In and Out Burgers.

(3) Further, the following uses within the development are prohibited: (1) premises which are to be used for a supermarket, convenience food store or for the sale of packaged or fresh seafood, meat or poultry for off-premises consumption; (2) the sale of packaged or fresh produce or vegetables for off-premises consumption; (3) the sale of dairy products (excluding cone ice cream) for off-premises consumption; (4) the sale of packaged or fresh bakery products for off-premises consumption; or (5) the sale of grocery items, or any of them. However, the prohibitions relating to off-premises consumption shall not apply to Lot One (1) (McDonald's and to its franchisees, successors and assigns). Provided, the restrictions set forth in this subparagraph shall be applicable only as long as Food Lion leases a portion of the contiguous property shown on the plat recorded in Plat Cabinet M, Slide 32-B in the Office of the Register of Deeds of Wayne County, North Carolina, and provided further, Food Lion may waive any of the provisions set forth in this subparagraph.

(4) No hazardous substances or materials (except as maintained in accordance with all applicable laws) shall be kept, stored, released or disposed of or allowed to accumulate on any lot except for building materials during the course of construction.

(5) No conduct or activity will be allowed which causes: (a) noise or sound that is objectionable in volume, duration, frequency or shrillness (specifically excluding a drive-through system used in connection with a McDonald's restaurant); (b) noxious odors (specifically excluding McDonald's restaurant purposes); (c) noxious, toxic or corrosive fumes or gases; or (d) unlawful fire or explosion hazards.



## ARTICLE TWO

SITE AND PLAN APPROVAL. Any building to be located on any lot adjacent to Mollie Drive as shown on the plat shall be sited in such manner as to front on Mollie Drive except for the McDonald's restaurant. Each building shall consist of brick, brick veneer or masonry construction (as approved by the Architectural Committee) on all sides.

## ARTICLE THREE

SETBACKS AND MOBILE HOMES. All buildings shall be situated so as to conform to the minimum setback lines as shown on the above referenced plat. No tent, shack, mobile home, modular home (whether or not conforming to the North Carolina Building Code) or any other form of building which can be relocated shall be situated on or allowed to remain on any lot; provided, however, such temporary structures will be allowed as reasonably necessary during construction. However, trash containers shall be allowed and sited as required by the City of Goldsboro, and appropriate storage sheds may be sited on a lot if approved by the architectural committee.

## ARTICLE FOUR

ARCHITECTURAL COMMITTEE. In addition to conforming to the City of Goldsboro's requirements, all site plans and building design plans must first be submitted in writing to the Architectural Committee of Southeast Commercial Park. The Architectural Committee will have thirty (30) days thereafter within which to review and approve or disapprove the proposed plans. If a plan is not expressly acted upon within thirty (30) days after the receipt thereof, the submitted plans shall be deemed approved. All decisions of the Architectural Committee are final.

The Architectural Committee shall consist of Harriet Ivey, Ted Ivey, and Scott LaFevers. A majority vote shall be required to approve any plans submitted to the Architectural Committee. Failure to achieve a majority vote shall constitute a denial.

Until further written notice, all such plans shall be submitted to: Ivey Commercial Properties, Inc., Attention: Harriet Ivey, 229 N.C. Highway 111 South, Goldsboro, NC 27534.

The Declarant may from time to time remove existing members and appoint other members to the Architectural Committee.

If Declarant shall sell its interest in Southeast Commercial Park to another developer, that developer can remove and appoint members of the Architectural Committee by means of recording an instrument in the Office of the Register of Deeds of Wayne County, North Carolina and will form the Property Owners' Association. At such time as the Property Owners' Association is operative, the Property Owners' Association will designate the Architectural Committee.

## ARTICLE FIVE

AMENDMENTS. If the Architectural Committee deems it necessary to do so, in its sole discretion, it may amend these Protective and Restrictive Covenants if said amendment(s) shall enhance the development and shall not increase costs or adversely affect any Benefited Parties' rights within the Southeast Commercial Park or affect any access or easement rights of any Benefited Parties. However, the uses set forth in Article One may not be amended. Any amendment(s) shall be recorded in the Office of the Register of Deeds of Wayne County, North Carolina.

## ARTICLE SIX

ENFORCEMENT. The strict enforcement of these Protective and Restrictive Covenants is deemed of major significance. Therefore, the Declarant, the Architectural Committee, as well as others owning lots in Southeast Commercial Park shall have standing to seek enforcement of these covenants in any court having jurisdiction. A violation of these Protective and Restrictive Covenants shall be deemed to have caused the Declarant, the Architectural Committee and other owners of lots in Southeast Commercial Park to have sustained irreparable harm such that injunctive relief (mandatory or prohibitive), in addition to all other relief afforded at law, shall be available to the aggrieved party. The prevailing party may recover his, her, its or their attorneys' fees as a part of the relief sought.

## ARTICLE SEVEN

TERM. These Protective and Restrictive Covenants shall remain upon and shall run with the land and shall be binding upon the owners of the lots, their heirs, successors and assigns, for a period of twenty (20) years from the recordation of these Protective and Restrictive Covenants in the Office of the Register of Deeds of Wayne County, North Carolina. These Protective and Restrictive Covenants shall automatically renew for an additional period of ten (10) years unless a written termination thereof shall be executed by three-fourths (3/4) of the owners of the lots (each lot having one vote), said termination to be recorded in the Office of the Register of Deeds of Wayne County, North Carolina, prior to the expiration of the initial twenty (20) year term.

## ARTICLE EIGHT

APPEARANCE. Each owner shall keep his, its or their lot free from tall grass, undergrowth, dead trees, trash and rubbish and shall keep each lot properly landscaped and maintained so as to present a pleasing appearance. No building shall be allowed to become rundown or dilapidated.

## ARTICLE NINE

EASEMENTS. Easements for access and for installation and maintenance of utilities and drainage facilities are reserved for the benefit of all owners of property within the Southeast Commercial Park as shown upon the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with access or with the installation and maintenance of



utilities and drainage facilities or which may change the direction of flow of drainage channels or underground drains in the easements or which may obstruct or retard the flow of water through drainage channels or underground drains in the easements. The easement area on each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which the Declarant, its successors and assigns, is responsible or for which a governmental authority or a public utility company is or shall become responsible.

#### ARTICLE TEN

UNDERGROUND UTILITIES AND STREET LIGHTING. Declarant reserves the right to subject the real property described hereinabove to a contract with Progress Energy or other public utilities serving the area for the installation of underground electric cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the owner of each lot. Other underground utilities may also be installed for telephone, cable television, water, sewer and the like. Each lot owner, or its tenant or franchisee, shall be responsible for all utilities costs incurred in or on its respective lot.

#### ARTICLE ELEVEN

SEVERABILITY. If one or more of these Protective and Restrictive Covenants or any part thereof by judgment or court order shall be held invalid or unenforceable, such judgment or order shall not affect any other provisions, which provisions shall remain in full force and effect. The failure of any person or entity entitled to enforce these Protective and Restrictive Covenants shall not be construed as a waiver of any future enforcement rights.

#### ARTICLE TWELVE

STREETS AND PARKING. No on-street parking will be allowed on Mollie Drive or on N.C. Highway 111. With respect to off-street parking, all parking areas will be paved (asphalt or concrete) with concrete curb and gutter construction.

#### ARTICLE THIRTEEN

COMMON AREAS. The term "common areas" shall include streets, roads, sidewalks on public rights of way, sanitary sewer easements, drainage easements, utility easements, outdoor lighting on streets, pump or lift stations and retention ponds. Common area maintenance shall mean all repairs, replacement, maintenance, costs and expenses incurred with respect to the common areas. Each lot owner shall be responsible for the common area maintenance in or on its individual lot except for the sidewalks on public rights of way, streets, pump or lift stations, and retention ponds, which shall be maintained by the Declarant until the Property Owners' Association is operational; provided, the Declarant or Property Owners' Association will have no obligation to maintain any common areas conveyed to or taken over by a governmental authority or public utility company. At such time as the Property Owners' Association is operational, the Declarant will convey title to all such common areas (to which Declarant has title) to the Property Owners' Association and shall assign all of its obligations hereunder to the



Property Owners' Association, which shall then assume and be solely responsible for Declarant's obligations herein, including common area maintenance, the payment of ad valorem taxes and insurance with respect to common areas owned by the Property Owners' Association.

The Declarant will make an initial contribution of Five Thousand Dollars (\$5,000.00) to a fund for the upkeep and maintenance of the common areas and this fund will be transferred to the Property Owners' Association once it becomes operational.

#### ARTICLE FOURTEEN

PROPERTY OWNERS' ASSOCIATION. The Declarant will form a Southeast Commercial Park Property Owners' Association, which may be a corporation or an unincorporated association. Whether the Property Owners' Association is incorporated, each lot owner shall be a member of the Property Owners' Association and one (1) vote shall be assigned to each lot. The Property Owners' Association will take title to all common areas not on a particular lot and not owned by a governmental authority or public utility company (the "Association Common Areas") and shall be solely responsible for the maintenance of such common areas (as set forth above in Article Thirteen), as well as the taxes assessed and liability and other insurance premiums incurred with respect to those common areas. The Property Owners' Association shall have the right and authority to assess the lot owners within Southeast Commercial Park for the purpose of raising revenues for funds necessary for common area maintenance for the Association Common Areas and for taxes and insurance for such common areas not located on a particular lot. In January of each calendar year, the Property Owners' Association shall assess the lot owners for an amount equal to that expended the immediately preceding year for the Association Common Areas maintenance, taxes and insurance. The amount of the assessment of each lot will be determined as follows: The square footage of a particular lot shall be divided by the total square footage of all lots in the Southeast Commercial Park, which shall determine the percentage owed by a particular lot. The total common area maintenance costs incurred for the entire development shall then be multiplied by the percentage owed for a particular lot to determine the dollar amount of the assessment applicable to that particular lot.

An assessment unpaid for more than thirty (30) days after receipt of written request for such payment shall become a lien on the affected lot when a notice thereof is recorded in the Office of the Register of Deeds of Wayne County, North Carolina. The lien may be enforced by the Property Owners' Association by filing a civil action in any court of competent jurisdiction within Wayne County, North Carolina.

Except as set forth in these Protective and Restrictive Covenants, each lot owner is responsible for the upkeep and maintenance of the common areas on its particular lot. If any lot owner fails to properly maintain the common areas on its lot, the Property Owners' Association, after fifteen (15) days' written notice to the offending lot owner, can complete the necessary work itself and then assess the offending lot owner with the Property Owners' Association's reasonable costs expended and be reimbursed by such offending lot owner within thirty (30) days after written request. If such reimbursement is not paid within such thirty (30)-day period, then this assessment shall become a lien as hereinabove set forth and may be enforced as hereinabove set forth.

ARTICLE FIFTEEN

NOTICE. The Declarant and, subsequently, the Property Owners' Association will maintain a current listing of the addresses of the Declarant, the Property Owners' Association, and of each lot owner. This listing shall be available upon request by any lot owner. Currently, the address of the Declarant is:

Ivey Commercial Properties, Inc.  
Attention: Harriet Ivey  
229 N.C. Highway 111 South  
Goldsboro, N. C. 27534

All notices sent under this declaration shall be sent by nationally recognized overnight carrier or registered or certified United States mail, return receipt requested and postage or other charges prepaid. All notices shall be deemed delivered when deposited with the overnight carrier or in the United States mail.

ARTICLE SIXTEEN

MISCELLANEOUS. Each lot owner shall have the right to audit Declarant's and, subsequently, the Property Owners' Association's records related to the maintenance of the development. Moreover, if the Declarant or the Property Owners' Association does not perform the maintenance of the common areas, for which the Declarant or the Property Owners' Association is responsible, the lot owners, or any of them, shall have the right to perform the maintenance of the common areas reasonably deemed necessary by them but only after first giving the Declarant or, subsequently, the Property Owners' Association a demand in writing specifying with particularity the matter or matters which need to be addressed. If the Declarant or Property Owners' Association fails to perform, within thirty (30) days after written request, without justification, it shall be liable to the owner or owners for its or their costs incurred.

IN TESTIMONY WHEREOF, the Declarant has caused this instrument to be signed in its corporate name by its President and its seal to be affixed by its Secretary on the day and year first above written.

IVEY COMMERCIAL PROPERTIES, INC.

By: Ted E. Ivey

Name: Ted E. Ivey

Title: President



Thomas R. Howell  
Corporate Secretary

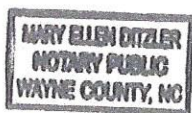


NORTH CAROLINA  
WAYNE COUNTY

I, Mary Ellen Ditzler, a Notary Public of the County and State aforesaid, certify that Ted E. Ivey personally appeared before me this day and acknowledged that he is President of Ivey Commercial Properties, Inc., a North Carolina corporation, and that he, as President, being authorized to do so, voluntarily executed the foregoing on behalf of the corporation for the purposes stated therein.

WITNESS my hand and official stamp or seal, this the 15th day of May, 2008.

(Affix Official Seal Here)



*Mary Ellen Ditzler*

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Signature of Notary Public

Mary Ellen Ditzler

My Commission Expires: 02/20/13